



King County

King County Office of the Ombuds

516 Third Avenue, Room W-1039

Seattle, WA 98104

Phone: 206-477-1050 Fax: 206-296-0948

Whistleblower Improper Governmental Action Complaint

(# *office use only*)

Please review the Whistleblower Protection Code Summary and the Whistleblower Protection Code (KCC 3.42) before completing this complaint form. We encourage employees to contact the Ombuds Office before filing a whistleblower complaint.

Pursuant to the Whistleblower Protection Code (KCC 3.42), I am reporting what I believe to be improper governmental action.

I am currently employed by King County: Yes No

**Name, position, and department of person(s) I believe to have engaged in
improper governmental action:** John Doe

Dow Constantine; Bob Burns
Christie True; See also attached by KB

Type of Improper Governmental Action:

Which type of improper governmental do you believe has occurred? Please check all that apply. If you know the particular law that has been violated, please provide it.

Violation of state or federal law or rule or county ordinance or rule including ^{but not limited to} King County Ethics Codes, including 3.04.020, 3.04.030; K.C.C. 4.57

Please cite applicable state or federal law or rule, or county ordinance or rule

Abuse of authority *MLB*

Gross mismanagement

Substantial and specific danger to the public health or safety

Gross waste of public funds

Preventing dissemination of scientific opinion or altering technical findings without scientifically valid justification

Whistleblower Complaint # _____

Basis for reporting:

How do you know the information you are reporting?

Personal or direct knowledge
 Others have told me about the situation
 Other (please explain):

Allegation of Improper Governmental Action:

Describe the alleged improper governmental action. Please be specific and include details and examples (who, what, when, where, how). What is the frequency of alleged improper governmental action? Attach an additional piece of paper as necessary.

Please see attached.

Whistleblower Complaint # _____

Names and positions of those who may have witnessed the alleged improper governmental action:

Please see attached.

Please list any additional evidence or documentation that would support your allegation of improper governmental action, and indicate whether you can personally provide that information. (You may provide us with supporting evidence when you file this report. If you are not supplying us supporting evidence at this time, please indicate when and how you plan to do so.)

Such documentation and other evidence will be provided. Such includes but is not limited to, "Second Amendment to the 2013 Concession Agreement for Seattle Event Solutions, Inc.," attached.

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Kevin R. Brown 4/11/18 Seattle, WA
Signature Date and Place (city, state)

Kevin Brown
Name (please print)

2823 34th Avenue S.

Home Address

Seattle WA 98144

City State Zip Code

(206) 335-8862

Contact phone number(s)

2kevinbrown@gmail.com

Contact email address

Whistleblower Complaint # _____

Confidentiality

The whistleblower code protects the identity of an employee who reports improper governmental action to the extent allowed by law, *unless* that employee consents in writing to have his or her identity revealed.

If you do not wish to have your identity kept confidential, please sign below.

I hereby waive the confidentiality provision of KCC 3.42.040 and consent to having my identity revealed.

Complainant's signature

Date

Whistleblower Protection Code Summary

We request that you read the Whistleblower Protection Code Summary and sign below before filing your complaint.

I acknowledge that I have read the Whistleblower Protection Code Summary and I understand its contents.

Employee Signature

Date

4/11/18

April 11, 2018

Over the last year the Parks Division has been preparing for the expiration of two contracts at Marymoor Park – the concert series contract and the contract to provide concessions of alcohol and food to the concert series. We have received specific direction from Christie True, based on discussions she has had with the Executive's Office, that has resulted in concerns I have about a fair and open process. This has been a recurring issue over the last 6 years with respect to these contracts.

I would like to provide a recap of the past 6 years – all supported by texts, emails, messages, contracts, spreadsheets, public disclosure requests, calendared meetings, and meeting notes from the following individuals: Dow Constantine, Sung Yang, Christie True, Bob Burns, Dave Meinert (SES), Marcus Charles (SES), Alex Kochan (AEG), Rob Thomas (AEG) and others to include Executive Office staff and Parks staff.

On January 31, 2012 I was asked by Executive Dow Constantine via text to meet he and his Chief of Staff (Sung Yang) at a bar called Local 360 to discuss Marymoor Park that night.

At the bar Marcus Charles and Dave Meinert were introduced to me as friends of Dow. We went into a private room in the bar along with a person named Alex Kochan, the NW Manager for AEG Entertainment.

The topic of discussion was the concert series at Marymoor Park. The specific discussion centered on how Dow felt that the current concert promoter should be replaced by a partnership between AEG (Alex) and SES (Dave and Marcus).

In ending the meeting, a directive from Dow to me and Chief of Staff Sung Yang was to identify a strategy to immediately find the current promoter in breach of contract and replace with AEG/SES.

Despite a Parks recommendation against termination, Sung Yang and Bob Burns (Department Deputy Director) called numerous meetings times on this issue. I was instructed by Sung to consult

with the PAO who, via a 2/8/12 memo, found it would be a legal risk to the County to terminate the contract early.

With the contract to expire the following year, I was directed by Sung and Bob to take steps to ensure that AEG/SES were awarded the 5 yr. multi-million dollar contract for concert series and concessions.

These steps included: Being directed to hold a very abbreviated and unpublished KC Parks RFP process to ensure no other competition (one other company did apply coincidentally). I was told to sit on the review panel, score the proposals to ensure AEG/SES was awarded the contract. This, despite the other applicant being rated higher by panel staff due to revenue stream and experience.

Specifically, I was coerced by Sung Yang and Bob Burns to tell staff that potential "intangibles" AEG/SES brought to the table were the reason for choosing them over the better qualified applicant. Although in bid, these proposed items were never implemented.

Upon awarding the contract, SES began to immediately step away from almost every commitment they made in their proposal that included payment of leasehold excise tax, management of the Clise Mansion, special events, etc. Very little of the initial proposal was actually implemented.

At the same time they sought, and with Executive approval, obtained additional revenue sources not intended to be part of providing concession for a concert series. These included specifically: Not paying any fee for lucrative Cirque contract; Obtaining revenue share for sponsorships KC/AEG obtained.

These actions cost the County (Parks Division) hundreds of thousands of dollars annually. For example, SES stated they would maintain, manage, book and cater gatherings for Clise. But they have not. So, for over 5 years no revenue has been realized.

No less than 50 times did I make my concerns known to my bosses, Christie True and Bob Burns. I felt that this was highly unorthodox and contrary to the public's interest. At the end, due to my

comments and opposition, I was removed from any negotiations. The final contract was negotiated by Sung Yang and Bob Burns.

To formalize, Bob Burns came down to my office and I was directed to sign the 5 year agreement which, after contentious conversation, I did sign, as instructed, with the initials UD (for "under duress") between my first and last name to document my protests and opposition.

When I requested an immediate meeting to discuss with Christie True, I was told that the challenges were the result of my staff's inability to negotiate contracts. This despite the hundreds of agreements they negotiate annually successfully. A veiled threat followed. "It's a good thing you signed".

This situation was incredibly emotional and distressful to me and for the entire time I was a wreck personally. For financial reasons (sole provider), I did as I was told.

The problems did not stop there. After implementation, numerous issues arose with the partner SES however it was made very clear by the Executive's Office and the DNR Director's Office that we were to accommodate SES in any way. A few examples included King County having to pay a deposit for liquor for Cirque du Soleil as SES refused, SES attempted to pay a different amount (roughly \$100 vs \$10,000 per show) than the contract stated.

New issues continued to arise. The Executive had told SES that there was money in the budget for a new fair and he wanted them to run it. When discovered another group was doing this work (CHOMPI), meetings were called by the Executive to find out why AEG/SES not included.

In addition, AEG/SES and the Executive pushed for extending their 5 year agreement to 20 years, despite the fact it is my understanding that we are not permitted to enter into this type of agreement without Council or Procurement approval. And despite the fact that SES was not performing based on their proposal that led to the contract award.

Sung Yang directed Bob Burns and I to investigate avenues to make this extension possible as well as a plan to increase the occupancy from 5,000 to 7,500. This included the development of strategies that would purposely skirt county processes and council review.

Again, I met with both of my bosses (Bob Burns/Christie True) and told them that I did not support this. The issue of the 20 year contract extension and expansion of the venue died only when two of the partners (Marcus Charles and Rob) spoke too publicly about their goals and created risk.

And on June 14, 2017, despite assurances from both Christie and Bob that we would have a fair and open process for both the concert and concession services, Christie True came unannounced to my office and instructed me that Dow wanted to ensure that SES was awarded the next concert concession contract as both the concert and concession contract were to soon expire. No mention was made of the concert contract, just that SES would get the concessions.

Despite this directive, I restated to Christie that we wanted partners who would best utilize the assets at Marymoor, be a good partner and most importantly provide a revenue stream to support park operations. After this meeting I directed staff to reach out to numerous groups to seek competition consistent with the normal practice.

Through this outreach, we received proposals we felt were more consistent with our goals and would utilize the Clise Mansion that has been vacant for 5 years and provide better revenue. I briefed Christie on this positive news and she at that time told us to continue to proceed.

Within days, multiple Executive Office staff contacted myself and Jessica to inquire about both the AEG contract and new amendments they wanted us to add as well as the SES contract "renewal". Bob Burns had also received these calls.

Immediately after on November 22, 2017, and contrary to what she told me before, Christie tells me there was no way we could pursue other proposals than what Dow directed, even though these

other proposals were better than the SES agreement. Christie directed me and my team to develop an RFP process that she and Executive must preapprove.

In 25 years, this is the only instance where I have been directed to steer a contract to a certain party or have it pre-approved by the Executive. Since I have been Parks Director, I have never had the department or the Executive express any interest or involvement in any contract with the exception of this one involving friends of the Executive.

On March 12th, 2018 Christie abruptly directed us to pull the RFP that we had been working on for months and draft an extension to give SES the contract for another year. There was still time to have any amendments she had wanted to have, made to the RFP, which would have been the normal process, but she instead ordered the RFP pulled and an extension to be awarded to SES. She told me (wrongly, and in a threatening manner) that this had to happen because my staff and I had "mismanaged" the concessions RFP process.

On March 19, 2018 at 4:00 PM I called Caroline Whalen and asked if she had time to talk with me to discuss challenges I had been having with my superiors. Caroline responded that she was in a meeting but could talk at 4:30. As I wanted to discuss this delicate issue in person, I walked up to the Chinook building and waited in one of the meeting rooms outside her office for the call. I waited until 6:00 and then returned to my office at the King Street Center. Caroline called shortly after stating she had forgotten to get back to me. I again asked to meet to discuss issues centered around Christie and Dow and she offered 11:30 the following morning. I met with Caroline and shared the background as I have shared with you today. She told me she felt the next step would be to meet with Susie Sloneker, HR attorney for KC. On the following Tuesday, I again shared the background with Susie (with my counsel present) and she indicated she would look into the situation. Susie also mentioned that if we felt this met the criteria of whistleblower actions, we could contact the Ombudsman. It was suggested that I remain out of the office on approved sick leave until an effort at resolution could be established.

On March 29, 2018 my attorney and I met with Jon Stier to gain a better understanding of how an Ombudsman investigation gets initiated and completed and to provide Jon with the background you have heard so far. At the time of our meeting with Jon we were still trying to work with the PAO and HRD on potential opportunities for internal resolution, therefore no formal report was filed.

On March 30, 2018 Susie spoke with my attorney and apparently based on conversation with the Executive Office, stated that she had secured the right for Parks to seek a different concessionaire other than SES for 2018 concerts. Susie also stated that Parks would be able to work independently of the Executive Office and the Department Director's Office on this issue. In addition, a communications consultant or workplace relationship facilitator (Lisa Fitzhugh, Creative Ground) was also brought in to work on "trust" issues between me and Christie.

Based on what Susie told my counsel, on Monday April 2, I met with my team and they quickly went to work towards securing new concessionaire services, making phone calls and successfully soliciting interest from two prospective concessionaires in the region. However, late on Monday, I was informed that the County had already signed a contract extension with SES, at least a week earlier (March 20), for all concession services at Marymoor through November 17, 2018. On Tuesday morning, April 3, my lawyer and I contacted Susie to inquire what her knowledge and understanding of the contract extension meant. She said she did not know the contract extension to SES had been made. She also said she could not respond to any questions or issues related to the contract – her issues were strictly HR. She told me and my lawyer that I should work with attorneys specializing with contracts so shortly after this call with Susie I met with this attorney who represents Parks (Barb Flemming). [Previously, in email a few days before, Christie had specifically told me and my staff we did not need to consult the POA about the SES contract extension she had directed us to work up.] After her consultation with the attorney specializing in contract law (Tom Kuffle), she informed me that the extension with SES was binding. Contrary to what we had been

told by Susie, there was no opportunity in 2018 for anyone other than SES to provide concession services at Marymoor.

I unfortunately had to go back to my staff and let them know that we no longer had the ability to seek alternative concessionaire services for 2018, but that our focus should be the development of a fair, transparent and open process for a five year contract for years 2019-2023. That was a really challenging conversation.

On Friday, April 6, 2018, the communications or workplace facilitator consultant was scheduled to meet with Christie at 9:00 and with me at 10:00, in an effort to gain more background and develop next steps as to our relationship. Upon meeting the consultant, she explained her background in politics and her shift to non-profit and consulting work. I, in turn, explained my background and gave the same information as I have given to you. She appeared somewhat shocked at the story, so I asked her what Christie had told her about the situation. Her response was that Christie indicated that the issues were all recent, and she mentioned only there had been 2017 concessions "process" challenges between me, her and the Executive. The consultant told me she directly asked why the Executive was so interested in this concession contract and that Christie did not respond. The consultant was disappointed with Christie, and stated that in her feedback to Susie she would tell her she was not a neutral party – that her work needed to focus on Christie. She felt I had been clear in my communications on this issue for several years. I was also very frustrated that Christie, in a meeting that was intended to start building trust, left out 5 years of really important information.

This has been and continues to be an unbelievably emotional and stressful ordeal for me, my family and my co-workers. In bringing this issue up to Christie and Bob countless times I have been yelled at, bullied, threatened, intimidated and treated as if I did not know how to manage staff or contracts. I have feared losing my job and at times I have contemplated quitting my job due to the constant anxiety and concern with respect to actions taken by others and directed of me. It has

been made clear to me by my superiors that if I did not do as I was told, I would be treated as insubordinate and could potentially lose my job.

In my entire career, have never endured such a mentally and emotionally challenging issue as this.

###

From: Brown, Kevin
Sent: Tuesday, March 27, 2018 5:35 PM
To: True, Christie; Emerson, Jessica; Patterson, Lorraine; Amerasinghe, Felix
Cc: Terry, Kathryn
Subject: RE: Concessionaire Contract

Christie

With all respect, I am finding your emails to me of last evening and this morning to be confusing. You instructed me and my team to pull the RFP we had been working on with you for months and which did go out in a timely manner and in a manner that could have been amended, and instead grant a one year contract extension to SES. You have repeatedly told me and my team that you need to be directly involved and to direct or approve our actions, even though it is not the normal process in this agency. We have been and are trying to follow your directions, as your reports.

As to the matter of what appears to be a need for council approval to do what you have asked us to do, please see title 4 of the Code which states as follows:

4.57.020 Terms of contract. The county may enter into a concession contract under this chapter for a term not to exceed 35 years. The county council must approve any concession contract with an original term that exceeds five years. For the purposes of this section "original term" includes extensions that could be effective without county approval.

The county shall establish a contract fee based on, among other factors, the revenue generated by the concessionaire from recreation user fees, admission fees, sales of goods and services, and other revenue sources directly related to the use of subject property, with the goal of maximizing revenues to the county. However, the contract fee may be reduced to reflect expenditures by the concessionaire for capital improvements. In addition, the concessionaire may receive credit for

the provision of recreational program scholarships to qualified participants and the sponsorship of programs and events on the premises for developmentally disabled or challenged athletes or other activities that primarily benefit the public. Revenue received under concession contracts shall be applied solely to parks and recreation purposes.

Please also note that it appears I will need to be on sick leave for at least a couple more days.

Thank you.

Kevin

From: True, Christie
Sent: Tuesday, March 27, 2018 4:54 PM
To: Emerson, Jessica
Cc: Brown, Kevin; Terry, Kathryn
Subject: Re: Concessionaire Contract

Under 7.12.150 it refers to other county agreements and based on the process and contract I believe you fall under goods and services. At some point I think we need to review the contracting process you are using and think about more going through procurement esp. for these types of vendors.

On Mar 27, 2018, at 4:47 PM, Emerson, Jessica <Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>> wrote:

I have not gone over it with Danielle. Historically all of our concession agreements have been developed under 7.12.150 and 4.57.020 based on the Omnibus ordinance 14509 and subsequent work with PAO.

If there is a better way, I am all for it. I'll look into it.

Thanks!

From: True, Christie
Sent: Tuesday, March 27, 2018 4:42 PM
To: Emerson, Jessica
<Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>>
Cc: Brown, Kevin <Kevin.Brown@kingcounty.gov<<mailto:Kevin.Brown@kingcounty.gov>>>;
Terry, Kathryn <Kathryn.Terry@kingcounty.gov<<mailto:Kathryn.Terry@kingcounty.gov>>>
Subject: Re: Concessionaire Contract

Jessica

I do not think Section 4.57 governs this contract. I believe this RFP and contract fall under the provisions of the typical goods and services process managed by procurement. Have you gone over this with Danielle?

On Mar 27, 2018, at 3:38 PM, Emerson, Jessica <Jessica.Emerson@kingcounty.gov<mailto:Jessica.Emerson@kingcounty.gov>> wrote:
Hi Christie,

Attached is the Waiver request information that we would submit online. You mentioned that you could take a look. Please let me know if you have any edits, otherwise we will move forward.

Thanks,
Jessica

From: True, Christie
Sent: Tuesday, March 27, 2018 7:24 AM
To: Brown, Kevin <Kevin.Brown@kingcounty.gov<mailto:Kevin.Brown@kingcounty.gov>>;
Terry, Kathryn <Kathryn.Terry@kingcounty.gov<mailto:Kathryn.Terry@kingcounty.gov>>;
Emerson, Jessica <Jessica.Emerson@kingcounty.gov<mailto:Jessica.Emerson@kingcounty.gov>>
Cc: Amerasinghe, Felix <Felix.Amerasinghe@kingcounty.gov<mailto:Felix.Amerasinghe@kingcounty.gov>>;
Patterson, Lorraine <Lorraine.Patterson@kingcounty.gov<mailto:Lorraine.Patterson@kingcounty.gov>>
Subject: Concessionaire Contract

I spoke with Danielle on the ferry this morning. In order to extend SESs contract you need to draft a waiver and run it through the approval process. The waiver should explain that due to the long lead time for a liquor license we ran out of time to run a competitive procurement process in time for the concerts to start which would have left us without concessions. It should note that we will start the process much earlier to prevent a similar occurrence next year.

You can obtain a template or copies of others from procurement. I believe they have a sharepoint site with them. Felix may also be able to help you.

I am not aware of any requirement for council review and approval and neither is Danielle. There is no need for PAO engagement. If there is something different about this contract that requires PAO and council review you will need to tell me why.

Please make getting the waiver and contract extension a priority.

Thank you.
<2018_WaiverRequests_Procurement_SES.docx>

**SECOND AMENDMENT TO THE 2013 CONCESSION AGREEMENT FOR
SEATTLE EVENT SOLUTIONS, LLC**

RECITALS

- A. On January 28, 2013, King County Department of Natural Resources and Parks through its Parks and Recreation Division ("King County") entered into a Concession Agreement ("Agreement") with Seattle Event Solutions, LLC ("Concessionaire) to provide food and beverage services, including alcoholic beverages for select Marymoor Park events. Together, the Concessionaire and King County are referred to herein as "the Parties."
- B. The Agreement was first amended to extend through April 29, 2018 to coincide with Teatro Zinzanni's *Love, Chaos and Dinner* show run at Marymoor Park, permitting the Concessionaire to provide needed and beneficial support services for these events.
- C. Both Parties now wish to amend the Agreement a second time to extend the Term through November 17, 2018 to coincide with Cirque du Soleil America, Inc.'s show performances, which will take place in Marymoor Park from August 13 to November 16, 2018.

THEREFORE, the Parties agree to amend the Agreement as follows:

1. Section 1.3, Term and Effective Date, shall be replaced in its entirety with the following:

The duration of this Concession Agreement shall begin on the date it is fully executed by both parties, as evidenced by their signatures, and end on November 17, 2018.

All other terms, conditions, specifications and requirements of the Agreement shall remain unchanged and in full effect, except as amended herein.

Approved by:

KING COUNTY



Kevin Brown, Director
Parks and Recreation Division

3/20/18

Date

SEATTLE EVENT SOLUTIONS, LLC



Marcus Charles, Principal
Seattle Event Solutions, LLC

3/16/2018

Date

Regulating Candidates, Campaigns, and Lobbyists

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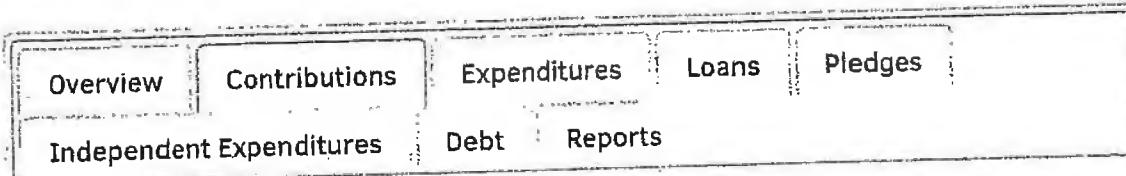
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JAMES DOW CONSTANTINE, 2017

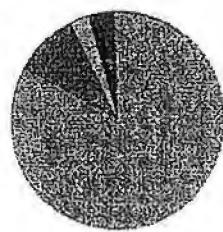


Cash contributions: \$1,343,161.84

In-kind contributions: \$7,661.14

View/Download

Contributions by contributor category



Individual: \$1,124,594.26

Click chart to display dollar amounts.

Contributor name contains

MDC



Largest total contribution by source matching "marcus"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
CHARLES MARCUS	SEATTLE	WA	Cash	\$2,125.00
MARCUSE EDGAR DR.	KINGSTON	WA	Cash	\$300.00
MARCUSS MARY F	SEATTLE	WA	Cash	\$250.00
COURTNEY MARCUS	SEATTLE	WA	Cash	\$206.00
MARCUSE LINDA	KINGSTON	WA	Cash	\$50.00

Follow the money FAQ

Data reflects what has been reported by the candidate's campaign, is updated once per day, and may not reflect the most recent report.

Public Disclosure Commission

711 Capitol Way S. #206
PO BOX 40908
Olympia, WA 98504-0908

Toll Free 1(877) 601-2828
Phone (360) 753-1111
Fax (360) 753-1112
Email pdc@pdc.wa.gov

Staff contacts

Largest total contribution by source matching "MDC"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
MDC HOLDINGS II LLC	SEATTLE	WA	Cash	\$2,000.00
MDC HOLDING INC.	SEATTLE	WA	Cash	\$1,250.00
MDC HOLDING LLC	SEATTLE	WA	Cash	\$300.00

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Olympia, WA 98504-0908

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Email pdc@pdc.wa.gov

Staff contacts

Report a violation

Other resources

Privacy policy

Largest total contribution by source matching "thomas robert"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
THOMAS ROBERT	BURIEN	WA	Cash	\$1,000.00
THOMAS ROBERT	SEATTLE	WA	Cash	\$1,000.00

Follow the money FAQ

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Staff contacts

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Other resources

Privacy policy

Employment

Comment on website

Largest total contribution by source matching "meinert"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
MEINERT DAVID	BURIEN	WA	Cash	\$1,500.00
MEINERT DAVID	SEATTLE	WA	Cash	\$500.00

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Staff contacts

Report a violation

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Comment on website

Having issues finding something on the site?

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY



King County

Office of the Prosecuting Attorney
CIVIL DIVISION
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430
FAX (206) 205-0447

July 1, 2019

Amy Calderwood, Ombuds
Jonathan Stier, Deputy Ombuds
King County Ombuds Office
516 Third Avenue
Seattle, WA 98104

Re: Kevin Brown Ombuds Complaint

Dear Ms. Calderwood and Mr. Stier:

Thank you for allowing us an opportunity to supplement the record now that your office has completed interviewing the respondents in this case.

Kevin Brown reached a settlement with King County on May 21, 2019, withdrew his Ombuds complaint and asked the Ombuds to close the investigation.

Neither the meeting at Local 360 nor conversations with representatives of AEG/SES violated the Ethics Code or constituted Improper Governmental Action

Since 2002, King County has solicited proposals for events, activities, and concessions at Marymoor Park through a Department of Natural Resources and Parks (DNR) process called the "Big Ideas Request for Ideas & Proposals." The process does not specify criteria to evaluate proposals. Instead, the proposer tells Parks what services or activities it wants to provide, and the terms under which the proposer would be willing to do so.

In 2003, The Lakeside Group/LiveNation, was selected through this process to produce shows for the Marymoor Concert Series. By 2009, concert revenues had dropped significantly, and in 2011 The Lakeside Group/LiveNation failed to hold the contractually mandated number of minimum concerts. What's more, The Lakeside Group/LiveNation was booking significant shows at another nearby venue, Chateau Ste. Michelle in Woodinville, which competed with Marymoor Parks for summer concert series acts, patrons and revenues.

DNR began thinking about other vendors for the Marymoor concert series contract, and in September 2011 Parks asked AEG Live to submit a proposal through the Big Ideas process.

King County Executive Dow Constantine has long held a strong interest in Marymoor Park, which he calls "the crown jewel of County parks." The Executive believes that if people come to a concert or event at Marymoor, they are more likely to discover other

July 1, 2019
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people come to a concert or event at Marymoor, they are more likely to discover other County parks and to positively associate their experience with King County.

The Executive discussed his interest in both a prospective Marymoor summer festival and a revitalized concert series with others, including David Meinert, founder of the successful Capitol Hill Block Party. Among Meinert's businesses was a partnership with restaurateur Marcus Charles in Seattle Events Services, a food and beverage concessionaire which had a partnership with concert promoter AEG.

A meeting was arranged between AEG and DNRP leadership, so that AEG could explain directly to DNRP how from an industry perspective the Marymoor concert venue was being underutilized and how the concert series could be made more successful. The meeting took place on January 31, 2012 and included the Executive and his Chief of Staff Sung Yang, Parks Division Director Brown (in place of DNRP Director Christie True and Deputy Director Bob Burns), Alex Kochan of AEG, Meinert, and Charles, and took place at Local 360, a Belltown restaurant and Charles' place of business.

This meeting was no different than other discussions the Executive has with constituents and vendors in the ordinary course of business.

In his complaint, Brown alleged that the Executive expressed that AEG/SES should replace The Lakeside Group/LiveNation as the Marymoor concert promoter during the January 31 meeting. Brown's recollection is inconsistent with the Executive's testimony and is unsupported by documentary evidence. The Executive testified that he had no expectation that the County would contract with AEG/SES as a result of the January 31 meeting. Rather, the Executive wanted DNRP leadership to hear the ideas of Kochan, Meinert, and Charles for improving the Marymoor concert series to bring more people and revenue to Marymoor, and to understand how the The Lakeside Group/LiveNation's promotion of shows at Chateau Ste. Michelle, a nearby competing venue, could be adversely impacting the Marymoor concert series.

DNRP Deputy Director Bob Burns and DNRP Director Christie True testified that they did not receive any direction from the Executive or Yang to replace The Lakeside Group/LiveNation as the concert vendor.

The County Ethics code does not prohibit the types of discussions that occurred at Local 360 nor should it – these sorts of exchanges are essential to the proper functioning of good government. It is important for elected officials to hear from constituents about problems and ways to make county services better. The Ethics Code is not violated by contacts between constituents or county contractors and government employees/officials.

Furthermore, while Brown asserts that political contributions played a part in Parks decision to contract with AEG and SES, that assertion is without basis in fact.

The Ethics Code specifically exempts campaign contributions within the limits set by state and local law from being considered unlawful gifts. The fact that an individual has given a

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campaign contribution does not render contacts with that constituent unlawful. The Ethics Code is not violated by contacts between residents or county contractors and government employees.

The selection of AEG/SES as the Concert/Food and Beverage Concessionaire did not constitute special treatment and was not an abuse of authority

In February 2012, as a consequence of The Lakeside Group/LiveNation failing to provide the minimum number of concerts, Yang asked the King County Prosecuting Attorney's Office to determine whether the promoter was in breach of contract. The Prosecuting Attorney's Office determined that it would be risky for the County to terminate the contract, and the County took no action to terminate the contract. The Lakeside Group/LiveNation contract expired in September 2012.

In March of 2012, AEG/SES presented a new Big Ideas proposal to Parks for the Marymoor concert series and other events.

Parks staff began preliminary conversations with AEG/SES after their proposal was submitted. In late April 2012 Burns recalled Parks staff indicating they were talking to Monqui Presents, a small Portland-based concert promoter, about a concert proposal, and The Lakeside Group/LiveNation was considering whether to submit a proposal for the concert series.¹ When Brown told Burns that other vendors might make a concert series proposal, Burns and Brown talked and Burns suggested to Brown that Parks hold off talking to AEG/SES until any other proposals were received.

Burns testified that he believed Parks had never received two proposals for the same Big Idea, and he believed it was the right and fairest approach. Normally with a Big Ideas proposal the County would vet the idea to determine if it wanted to pursue it or not, and if it did would commence negotiations. In this situation, there was the possibility of more than one proposal for the same idea, which Burns believed would then entail comparison of the different proposals.

Burns and Brown met with Yang, and Brown informed Yang of potential interest from other concert vendors. Yang directed Parks to establish a due date by which any other proposals should be received in order to be considered.

Burns testified he thought the establishment of a date was reasonable and appropriate to keep the process moving, and also thought the two week deadline Yang suggested was reasonable.

After receiving proposals from AEG/SES and Monqui, Yang requested a meeting to discuss the proposals. Burns testified that Brown told him and Yang that Parks staff preferred Monqui as the concert vendor because they felt Monqui would be easier to work with and that their proposal included a higher percentage of ticket sales revenue to the County.

¹ The Lakeside Group/LiveNation did not submit a proposal in spring 2012.

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Yang encouraged Brown and his staff to consider other criteria in the vendor selection process, such as the ability to produce popular events that would bring more revenue and more people to Marymoor. Burns testified that he agreed with those points in the meeting and encouraged Brown and his staff to consider those factors in a subsequent discussion.

Burns testified that while Monqui's ticket percentage proposal was higher than AEG/SES's (10% vs 5%), AEG/SES's per ticket contribution was higher than Monqui's (King County would get \$2.50 per ticket sold by AEG compared to \$1 per ticket sold by Monqui), and also that there was a belief that as a national promoter (the second largest concert promoter nationally after LiveNation), AEG could bring more and better quality acts to the series, translating into higher ticket prices, better attendance, and more overall revenue to the County.

Burns also testified that AEG/SES's Big Ideas proposal had more options for Parks to consider: Programming and management of Clise Mansion, another underperforming Parks asset, new events at Marymoor, and more concerts each season than Monqui had suggested.

Yang's and Burns' suggestion that Parks staff focus should be the ability of the concert vendor bringing more popular concerts, attract more patrons and generate more revenue for Parks programs were appropriately the most important considerations in the concert venue selection process. That suggestion was in line with the Executive's vision to raise the profile of Marymoor Park throughout the West Coast.

Brown's feeling that Monqui would be an easier vendor to work with was far less important than which vendor would bring more visitors and concerts – and thus more revenue – to Marymoor. Generally, ease of vendor relations is not generally a criterion for County contracts.

Brown said he felt Burns and Yang pressured him to select AEG/SES because their principals were friends of the Executive. Brown's feelings were not supported by the evidence submitted.

Burns testified that he believed AEG was the more qualified concert promoter as compared to Monqui given their size and reach. Burns knew AEG was one of the largest concert promoters in the country and the AEG/SES proposal included more elements, including new events at Marymoor and Clise Mansion. AEG's chosen concessionaire, SES, had a record of running successful food and beverage operations, compared to Monqui's proposal which had no concessionaire and proposed nothing new for Clise Mansion.

AEG/SES was provided no special treatment in the selection process.

Subsequent financial performance amply validates the County's decision. In 2013, the first year of the AEG/SES partnership, concert series revenues at Marymoor increased by 92 percent, and have increased every year since.

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The fact that the terms of the contract between SES and the County were different that SES's proposal did not violate the Ethics Code and does not constitute Improper Governmental Action

After contract negotiations between AEG, SES, and County staff commenced in 2012, Burns informed Yang about the importance of allowing about a dozen previously scheduled annual events at Clise Mansion to continue, even though this was new information to SES. This limited the number of dates that SES could bring new events to Clise Mansion, thus limiting SES's revenues. Yang agreed with Burns and Parks that it was important to reserve space for nonprofits and others that had historically used Clise Mansion, and that position was reflected in the final agreement with SES.

SES was disadvantaged in this arrangement because they had fewer prime dates to produce events that would generate revenue.

Burns testified that he became involved in the contract negotiation with SES in late December 2012 or early January 2013 at Yang's request when Parks staff was at an impasse with SES over these and other key terms of the contract.

It is neither unusual nor improper for the Executive's office to direct department leadership to become more engaged in contract negotiations if a project is not progressing.

Burns learned that SES was also concerned that Parks had an existing contract with Cirque du Soleil that offered Cirque wide latitude on when they could schedule their annual event. This would make it very difficult for SES to promote other events at Marymoor.

In 2013, SES provided food and beverages at four events at Marymoor without an agreement in place (informally, they were paid costs plus \$1 total for each event), which Burns thought created liability for the County. Burns said he discussed these issues with Yang. Yang agreed with Burns that there should be no change to Parks commitments to Cirque du Soleil, and that previous events at Clise Mansion should remain, even though it would be more difficult for SES to bring additional events to Marymoor.

Burns testified that he proposed a one-year agreement to get a basic contract in place and allow more time to work out the issues related to the Cirque scheduling holds and historic events at Clise Mansion, but SES declined, indicating they spent significant resources at Parks direction getting ready to implement a 5-year agreement, and they could not recoup those investments in a year.

Burns proposed to SES a solution that he felt would be beneficial to the County: SES would be a non-exclusive concessions vendor for events at Marymoor and would pay the county 10% of gross receipts, except the Cirque du Soleil event in 2013, and SES would be a non-exclusive concessions vendor at Clise Mansion and would pay the County 10% of the gross receipts.

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This option would enable SES to produce future events, but also allow Parks to use other vendors. Burns testified that the parties promised to keep discussing Clise Mansion and Marymoor after they signed the agreement.

Burns testified about his interaction with Brown when the two discussed signing the 2013 SES contract.

After negotiating with SES on a Friday afternoon, Burns recalled talking with Brown by phone and gave him an overview of the negotiated agreement. Burns also recalls a follow up conversation the following Monday morning. Burns knew that Brown was frustrated that SES had backed away from some of their original proposals when SES learned that existing obligations at Marymoor and Clise Mansion would take precedence, limiting their options and event plans. Burns reiterated why he thought the terms were fair and appropriate given the changed circumstances. Burns did not recall Brown expressing that he was signing the SES contract under duress.

The Deputy Ombuds asked Burns whether someone other than Brown could have signed the agreement. Burns testified that it was standard protocol for a division director to sign contracts for that division. However, he acknowledged that either he or True could have signed it.

Given that Burns was unaware that Brown felt he was signing the contract under duress, it was not improper for Brown to sign the contract.

It was appropriate for Burns to agree to different terms than SES had originally proposed as part of the negotiation process. The Parks Division's Big Ideas process differs from a traditional County Request for Proposals (RFP) process managed by the County's Finance and Business Operations (FBOD) division.

In an FBOD managed RFP, the County designs the terms of the agreement it wants proposers to bid on and sets the terms of the contract in advance of a bid for the proposers to consider.

In the Big Ideas process, proposers tell Parks what services or ideas they want to provide to Parks and tell Parks the terms they would be willing to accept to provide the service. The 2012 Big Ideas Request for Ideas & Proposals specifically says, "King County may negotiate terms that differ from the terms initially submitted by proposers." That same language is also included in every Big Ideas Request for Ideas and Proposals, up to and including the 2019 Big Ideas Request for Ideas & Proposals.

Burns decision to agree to contract terms that deviated from SES's original proposal was consistent with the express terms of the Big Ideas process, and was responsive to issues that arose during negotiations, including issues driven by date restrictions desired by King County.

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The contract with SES reflected King County priorities and concerns, and did not violate the Ethics Code and is not Improper Governmental Action.

King County's conduct during the term of the 2012 Contract Did not Violate the Ethics Code or constitute Improper Governmental Action

Burns and True testified about issues that arose during the term of the 2012 AEG/SES contracts with the County:

- The County rejected SES's argument that they should pay the County 10% of net receipts rather than 10% of gross receipts;
- The County rejected SES's informal proposal to extend their five-year agreement to ten or fifteen years in exchange for funding improvements at Clise Mansion;
- The County rejected AEG/SES discussions to enlarge the Marymoor concert venue and extend the concert season;
- The County selected another concessionaire for the CHOMP! annual event despite AEG/SES complaints that they were not involved;
- After discovering that Parks was forgoing revenue due the County by misreading the terms of the SES contract, True informed Parks staff that they should have collected revenue due to the County.

Burns and True recalled discussing an extension of the AEG/SES contracts in exchange for an investment in Clise Mansion. Yang requested Parks staff to look into it. Burns testified that he and Brown had a similar negative reaction to the contract extension suggestion and that it did not make financial sense. Neither True or Burns recall any direction from the Executive office to pursue the idea. This idea was not pursued and there was no contract extension.

True testified that Yang asked Parks staff to explain why AEG/SES were not part of the CHOMP! event. True testified that she had asked either the Executive or Yang if AEG could help bring better musical talent to CHOMP! The Executive recalled thinking that would be difficult since the County likely didn't have the budget to obtain the type of talent AEG could provide. When Parks staff explained to Yang why CHOMP! food and beverage concessions were not part of the SES contract, there was no further inquiry and no direction to Parks staff to change course with respect to the event.

Brown's complaint also alleged that the County has forgone "hundreds of thousands of dollars annually" because SES failed to pay the revenue owed the County during the Cirque du Soleil contract. Both Burns and True testified that they were unaware until 2017 Parks staff had been misinterpreting the SES contract after the 2013 Cirque du Soleil event and had failed to collect revenues owed the County.

When True asked Brown about this issue, he indicated that he and his staff assumed that they were not to collect the monies owed from SES for the 2014 and 2017 Cirque du Soleil events because they had not collected that revenue in 2013, even though the contract language exempted only the 2013 event. This misinterpretation rested entirely

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with Parks staff, and when True discovered it, she informed them to that they should have collected the funds owed to the County. There was no direction from the Executive or DNRN management to forgo this revenue.

Burns and True both refute Brown's assertion that he told them "over 50 times" he was concerned the County's contracts with AEG or SES were "highly unusual and contrary to the public's interest." The documentary evidence before the Ombuds does not support his assertion.

Burns and True recalled Brown expressing some frustration that SES would go directly to the Executive's office with a contract administration issue or a new idea for Marymoor events, but recalled no instance where Brown raised ethical concerns about the contracts.

Nothing in ethics or other county codes prevent a County contractor from reaching out to the Executive's office or a Councilmember's office about contract administration issues or frustrations. To do so is common, permissible, and expected. At no time did Brown indicate to True or Burns that he had ethical concerns working with SES or AEG.

Burns testified that with respect to the 2013 Cirque du Soleil deposit, his concern was not placating SES but keeping Cirque du Soleil happy and making sure that the upcoming Cirque event, which was days away, could occur as planned. Burns does not recall who made the final decision to cover the deposit, but believes it was a group decision with Parks. There was no financial loss to the County because the deposit was timely returned to the County. Burns and True testified that no one in DNRN or the Executive's office supported accepting less revenue from SES than to which the County was contractually entitled.

The Executive's office and DNRN upheld all standards of ethical conduct during the duration of the AEG/SES contract.

Nothing in the contracting process for the 2018 concert or food and beverage concessions contracts violated the Ethics Code or constituted Improper Governmental Action

The Executive testified that he never told anyone at DNRN to award any contract to AEG or SES. True and Burns both testified that they were never told to award AEG or SES any contract, and that they never told Brown that he or his staff either had to or should award AEG or SES a contract.

True testified that she told Brown and Parks staff that the 2018 concert and food and beverage contracts would be awarded after an FBOD managed RFP process, not a Parks Big Ideas process. True felt that this would be the best way for the County to attract the best qualified vendors for the work, and provide clear criteria unlike the subjective selection process of Big Ideas.

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Contrary to his supervisor True's directive, Brown determined on his own that he and his staff should solicit Big Ideas proposals for the food and beverage concessions contract and did not utilize the RFP process.

Burns testified that he learned from Brown in the fall 2017 that Brown and his staff were close to an agreement with some food and beverage contractors. Burns had not been deeply involved in the discussion about the 2018 concert or food and beverage contracts, and took Brown's comments to be positive. However, Burns testified that this got his attention because he was not aware that an RFP had been posted as directed. Burns asked Brown if True was aware that Parks was close to an agreement with the food and beverage concessionaires and Brown said yes.

That same morning Burns and True had a regularly scheduled meeting, and Burns and True both testified that they discussed Brown's comments about being close to agreement. True testified that she was unaware that the food and beverage RFP had been posted, and asked Brown at one of their one-on-one meetings about his comments to Burns. Brown and True had a heated conversation in True's office about the fact that Brown had not followed her directive to post the food and beverage concession RFP and was instead seeking Big Ideas proposals. True tried to talk to Brown about his deviation from the plan during the meeting and Brown refused to finish the conversation and left the meeting. Though he had ignored her directive, True did not tell Brown that he would lose his job or that she would find him insubordinate.

Brown's decision to defy True's directive regarding the food and beverage RFP, however, reflects a disregard for DNRP's line of authority.

True testified, that after the November 2017 meeting, she and Brown agreed that Parks staff would work with FBOD to post the food and beverage RFP. True testified that she told Brown that she wanted to review the RFP before it was posted. Parks staff did not complete the RFP package until February of 2018 and posted it without her review, again contrary to her directive.

When True reviewed the RFP, she did not think that it was well drafted with respect to the contractor's obligations regarding Clise Mansion. True also felt that some of the criteria for selecting the successful proposer were unclear and that Parks had not allowed enough time for potential contractors to submit proposals. Because she believed the RFP was not ready for consideration, True directed that it be taken off line.

This delay in the RFP process created a need for Parks to find a concessionaire for the upcoming April 2018 Teatro Zinzanni engagement, and Brown asked True about extending the 2012 SES contract to cover concessions for that show only. True agreed that the extension made sense through April.

Soon after, Parks staff and True realized that it would be unlikely that a new vendor could complete the liquor license process in time for the 2018 summer concert season. Parks staff and True spent several days working with FBOD and attorneys from the Prosecuting

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Attorney's Office trying to figure out the best way to extend the SES contract or forgo alcohol revenue in the upcoming season.

During this time, True learned that the Parks Deputy Director had already signed a year-long extension of the SES contract.

In May 2019, after a competitive RFP process, Parks staff chose SES to be the food and beverage concessionaire for a second five-year term.

The process adhered to County policies and standards governing contracting and procurement.

Conclusions

1. The Executive's office has the authority to adopt a vision for delivering services that provides direction to the various departments within County government. The Executive wanted to improve the quality of user experience at Marymoor Park and increase the revenue generated by park activities including the Marymoor Concert series.
2. Making the quality of concerts and revenue the prime criteria for choosing among potential concert/food and beverage concessionaires was appropriate. Applying those criteria lead to the selection of AEG and SES in 2012 and again in 2018. The Marymoor Concert series under the AEG/SES contract succeeded in dramatically increasing concert attendance and revenue to Parks.
3. There is no evidence of any special favorable treatment of or consideration given to AEG/SES. AEG/SES brought several ideas or questions forward during the term of the 2012 contract that were analyzed but not implemented. A contractor asking the County to consider ideas beyond the present contract is common and does not violate the Ethics code. A contractor taking ideas or frustrations directly to Executive's office is also not unusual and does not violate the Ethics code. The contacts between AEG/SES and the Executive's office were typical of the many contacts that occur daily between County employees and County contractors.
4. Although the Big Ideas process has been approved by the County Council for use in promoting innovations in County Parks, in retrospect large competitive contracts such as for the concert series and the food and beverage concession are better awarded through a standard FBOD-managed RFP process. The County has moved to use the RFP process for those contracts and will use the RFP process going forward. Moreover, the County is reassessing how best to utilize the Big Ideas process.
5. True and Burns lead a large department with many programs and projects that regularly and rightly are the subject of interest from the Executive and Council. Although they are accustomed to this, they understand how division directors and

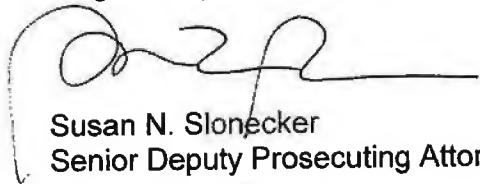
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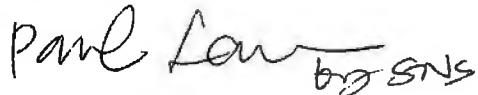
employees might feel added pressure when the Executive or Council is interested in their work. Had Brown appropriately expressed to True and Burns at the time he had concerns about potential ethics issues, they are confident they could have found a way to work through those concerns.

Please do not hesitate to contact us if you have any questions. Thank you.

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